

REPORT TO THE FIRST REGULAR SESSION  
OF THE  
ONE HUNDRED TWENTY-FIRST LEGISLATURE

PERTAINING TO THE IMPLEMENTATION  
OF THE  
OPTIONAL EXPANSION LIMITATION  
IN THE  
SHORELAND ZONE

PURSUANT TO PUBLIC LAW CHAPTER 748 SECTION 7 (1998)

Submitted by the:

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## Introduction

The Mandatory Shoreland Zoning Act (Act), Title 38 MRSA section 435-449, requires all organized municipalities in the State of Maine to adopt shoreland zoning ordinances that regulate land-use activities within 250 feet of great ponds, rivers, tidal waters, and freshwater and coastal wetlands, as well as within 75 feet of certain streams. The Act also limits the size of expansions of structures that do not meet the water-setback requirement. Since January 1, 1989, such structures are limited to an expansion in floor area and volume of less than thirty percent. Section 439-A.4 of the Act states:

Notwithstanding any provision in a local ordinance to the contrary, all new principal and accessory structures and substantial expansions of such structures within the shoreland zone as established by section 435 must meet the water setback requirements approved by the board (Board of Environmental Protection), except functionally water-dependent uses. For the purposes of this subsection, a substantial expansion of a building is an expansion that increases either the volume of floor area by 30% or more.

The Department considers Section 439-A.4 to apply to the lifetime of the structure, and to that portion of the structure that is less than the required setback from the water. In the *State of Maine Guidelines for Municipal Shoreland Zoning Ordinances* (Guidelines), both "floor area" and "volume" are defined.

Over the years following its implementation, the Department received many comments regarding the 30% rule. Some felt that the 30% rule favored those with larger structures. Thirty percent of a large structure can be significantly more than thirty percent of a small one. Thus, the owner of a large structure close to the water can expand more than the owner of a smaller camp located further from the water. This is perceived by some to be unfair and environmentally unsound.

Others commented that volume calculations that must be done as part of the 30% expansion limitation can be complicated, especially with odd-shaped structures, and when the setback line passes through the structure. Furthermore, the Department became very much aware of the need for municipalities to track expansions over time. Whereas, the 30% limitation became effective on January 1, 1989, and applies to the lifetime of the structure, the town must document the amount of any expansion that has occurred, and know when further expansion is prohibited. Only through good records can this be accomplished. Yet, many municipalities do not adequately maintain the necessary records.

## Enactment of an Optional Expansion Limitation Method

In 1997, the 118th Legislature enacted An Act to Clarify and Amend the Storm Water Management Laws. This law required the Department to study and report on: whether approval of an expansion of a nonconforming structure in the shoreland zone should be made contingent upon a reduction in the total nonpoint source pollution from the lot, and

whether the 30% rule should be amended to improve the equity of its application. The Department convened a "stake-holders" group to address its legislative mandate. The group was successful in developing an alternative that was presented to the Legislature for consideration.

In 1998, Public Law Chapter 748, An Act to Reduce Nonpoint Source Pollution from Existing Sources, Amend the Shoreland Zoning Laws and Amend the Site Location of Development Laws, was enacted. This law provided an optional method for municipalities to regulate expansions of nonconforming structures to reduce the impact of those structures on water quality and storm water run-off.

Chapter 748 allows a municipality to limit expansions based on a structure's total floor area and height, rather than a 30% expansion based on floor area and volume. A copy of the full text of the amendment is found in Appendix A. Chapter 748 also requires the Department to report to the Committee on Natural Resources by January 15, 2003 on the implementation of the optional expansion limitation provisions. The report must evaluate the use of and compliance with the alternative expansion provisions and evaluate the environmental benefit of the provisions in comparison with the 30% expansion limitation.

### Implementation, Results and Conclusions

Following enactment of Chapter 748 the Department amended its Guidelines (February 6, 1999) to include the optional alternative to the 30% expansion limitation. Subsequently, Department staff used mailings, workshops, and code enforcement officer training programs to publicize the optional expansion limitation that was available to the municipalities.

In the four years since the Department's Guidelines were amended to include the optional expansion limitation, thirty-six (36) municipalities have adopted it. One town, Brunswick, adopted the alternative to the 30% rule but has since reverted to the 30% rule because the new rule proved to be too limiting to many home owners in that town's shoreland zone. The City of Bath chose to regulate most of its shoreland zone pursuant to the new option, but has kept a small portion of its shoreline under the 30% expansion limitation. Thus, 34 municipalities of the state's approximately 450 cities and towns subject to the Shoreland Zoning Law have adopted the optional expansion provisions for all of their shoreland areas. A list of the towns that have enacted the alternative expansion provisions is found in Appendix B.

The Department has spoken with municipal officials from more than 75% of the municipalities that have incorporated the alternative expansion provisions. Based on those conversations, the Department has determined that the alternative has worked well in nearly all of those towns that have adopted it. Code enforcement officers are extremely pleased with the change. They have found it to be fair and much easier to administer and enforce. They no longer have to keep close track of the dates and sizes of past expansions, since the limit is based on a specific amount of total floor area and building

height rather than a percentage based on the structure size at a certain time in the past. Furthermore, complicated volume calculations are no longer necessary.

Numerous officials have also noted that the alternative system is more beneficial to small camp owners. Those owners, provided their structure extends at least 25 feet from the water body, can expand to at least 1000 square feet in total area. Thus, nearly every camp owner can have a structure of a reasonable size, regardless of its original dimensions. Under the 30% rule, a 500 square foot camp can be expanded by only 150 square feet. However, pursuant to the alternative rule, that camp may be expanded up to a total of 1000 square feet.

Code officers have noted that some structure owners have been prohibited from expanding because their structures already exceed the floor area or height limitations contained in the new option. However, most town officials recognize that the limitations in the new option fairly limit larger nonconforming structures from further expansion within the "buffer" area. This limitation benefits water quality and the natural beauty of the shoreline.

The section of the new option that was specifically designed to address non-point source pollution (NPS) was adopted by fourteen (14) of the thirty-six (36) municipalities that chose the alternative expansion limitation. Those 14 municipalities adopted the provisions allowing for a special expansion of 500 square feet if certain stormwater run-off control measures are taken. Measures include vegetative plantings, increasing structure setbacks, and addressing run-off from roofs and driveways. In the fourteen towns that have included the "bonus" 500 square feet expansion provision only two special expansion applications have been granted. One has been allowed in the town of Belgrade and one has been granted in Brunswick. Brunswick has since reverted to the standard 30% expansion limitation. In the spring of 2003, Department staff plan to visit these two sites in Belgrade and Brunswick to determine how well the buffer plantings are being maintained.

Based on experience with the optional expansion limitation, the Department has concluded that it is a viable option for municipalities that wish to adopt it. Although it has not been enacted by a large number of municipalities, its provisions are sound. The option provides a fair method of limiting expansions, while also providing municipal officials with a less complicated administrative process.

The "special expansion allowance", permitting an extra 500 square feet of floor area, provides an incentive for owners of nonconforming structures to establish improved vegetative buffers, and to mitigate stormwater run-off. It also includes an incentive for landowners with a structure less than 50 feet from the setback requirement to voluntarily relocate the structure further from the water.

In conclusion, the Department will continue to work with municipalities that wish to incorporate the expansion limitation alternative into their respective ordinances.